TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 217.

FREDERICK HODGES, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 31, 1901.

(18,149.)

(18,149.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 317.

FREDERICK RODGERS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 18, 1901.

1 In the Court of Claims.

FREDERICK RODGERS
vs.
UNITED STATES. } No. 22002.

I.—*Petition.*

The original petition of the claimant was filed August 8, 1900.

On motion of claimant, and by leave of court, his amended petition, in lieu of said original petition, was filed April 20, 1901, and is as follows;

Amended Petition.

Filed April 20, 1901.

To the honorable the Chief Justice and judges of the Court of Claims:

The claimant respectfully shows:

1. He is a citizen of the United States and a commissioned officer of the United States Navy, at present stationed in the city of Washington and District of Columbia.

2. By an act of Congress entitled, "An act to reorganize and increase the efficiency of the Navy and Marine Corps of the United States," approved on March 3, 1899, it was, among other things, provided:

"SEC. 7. That the active list of the line of the navy as constituted by section one of this act shall be composed of eighteen rear admirals. * * * Provided, that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier general in the army.

SEC. 13. That after June 30, 1899, commissioned officers of
2 the line of the navy, and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army; Provided, that such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty. * * *"

By section 1466 of the Revised Statutes of the United States it was, among other things, provided:

"SEC. 1466. The relative rank between officers of the navy, whether on the active or retired list, and officers of the army, shall be as follows, lineal rank only being considered:

* * * * * * *

Rear admirals with major generals.
Commodores with brigadier generals.

* * * * * * *

By section 1261 of the Revised Statutes of the United States it was, among other things, provided:

"SEC. 1261. The officers of the army shall be entitled to the pay herein stated after their respective designations:

* * * * * * *

Major general: Seven thousand, five hundred dollars a year.
Brigadier general: Five thousand, five hundred dollars a year."

* * * * * * *

3. On March 3, 1899, the claimant was duly appointed a rear admiral in the line of the United States Navy, and was commissioned accordingly, and at all times thereafter has held his said commission and has performed the duties of his grade, which have been assigned to him, namely, from March 3, 1899, until February 13, 1901, inclusive, shore duty as the president of the board
3 of inspection and survey, and from February 14, 1901, until March 2, 1901, inclusive, sea duty as senior squadron commander of the United States naval force on the Asiatic station. From the date of his said appointment until March 2, 1901, inclusive, the claimant was embraced in the nine lower numbers of the grade of rear admiral.

4. Pursuant to the provisions of law, hereinbefore set forth, the claimant was entitled to receive from the United States, for his services during the period from March 3, 1899, until June 30, 1899, the pay which is provided for a brigadier general of the United States Army, to wit: pay at the rate of five thousand five hundred dollars per annum, which for the said period would have amounted to one thousand, eight hundred and two dollars and seventy-eight cents. But during the said period the United States, in violation of the said laws and in violation of the claimant's rights in the premises has allowed and paid the claimant only the said pay provided for a brigadier general less fifteen per centum, to wit: pay at the rate of four thousand six *thousand* and seventy-five dollars per annum, which, for the said period, has amounted to one thousand five hundred and thirty-two dollars and thirty-six cents. Wherefore the claimant was and is entitled to receive from the United States for his services rendered during the said period two hundred and seventy dollars and forty-two cents in addition to the
4 sum allowed and paid to him therefor.

5. At all times between July 1, 1899, and February 13, 1901, both inclusive, pursuant to the provisions of law, hereinbefore set forth, the claimant has been, and is entitled to receive from the United States the pay, less fifteen per centum, which is provided for a major general of the United States Army, to wit: pay at the rate of six thousand three hundred and seventy-five dollars per annum, which for the period from July 1, 1899, until February 13, 1901, both inclusive, would amount to the sum of ten thousand, three hundred and twenty-three dollars and ninety-six cents. But during the said period, the United States, in violation of the laws hereinbefore set forth, and in violation of the claimant's rights in the premises, has allowed and paid the claimant only the pay, less fifteen per centum, which is provided for a brigadier general of the United States Army, to wit: pay at the rate of four thousand six hundred

and seventy-five dollars per annum, which for the period from July 1, 1899, until February 13, 1901, both inclusive, amounted to seven thousand five hundred and seventy dollars and ninety cents. Wherefore the sum allowed and paid to the claimant by the United States for the services rendered by him from July 1, 1899, to February 13, 1901, both inclusive, is two thousand, seven hundred and fifty-three dollars and eight cents less than the sum which he was and is entitled to receive.

5 6. Between February 14 and March 2, both inclusive, pursuant to the provisions of law hereinbefore set forth, the claimant was entitled to receive pay at the rate of seven thousand dollars per annum, which, for the period between February 14 and March 2, both inclusive, amounted to two hundred and fifty-nine dollars and seventy-three cents. Wherefore the sum allowed and paid to the claimant by the United States for the services rendered by him during the said period is ninety-four dollars and forty-three cents less than the sum which he was entitled to receive.

7. The United States has, furthermore, failed to pay the claimant the sum of two hundred and thirty-three dollars and twenty cents, which is the balance due and payable to him on account of the commutation in lieu of his proper allowance for quarters during the said period, over and above the allowance which he has received.

8. The claimant has made due demand upon the United States for the pay and allowances to which he has been and is entitled as aforesaid, and for the said sums of two hundred and seventy dollars and forty-two cents; two thousand, seven hundred and fifty-three dollars and eight cents; ninety-four dollars and forty-three cents, and two hundred and thirty-three dollars and twenty cents; in all amounting to the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, but the same has not been

6 paid to him, nor any part thereof.

The claimant is the only person owning or interested in the above claim above set forth, and no assignment or transfer of the same, or any part thereof, or interest therein has been made. The claimant is justly entitled to receive and recover from the United States for and on account of his services hereinbefore mentioned, the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, after allowing all credits and offsets. The claimant has always borne true allegiance to the Government of the United States, and has not in any way aided, abetted, or given encouragement to rebellion against it.

Wherefore, the claimant prays for judgment against the United States in the sum of three thousand, three hundred and fifty-eight dollars and thirteen cents, and for such other and further relief as this honorable court may be entitled to grant both at law and in equity in the premises.

FREDRICK RODGERS,
By McCAMMON & HAYDEN, *Attorneys.*

DISTRICT OF COLUMBIA, *ss:*

James H. Hayden, being duly sworn, deposes and says that he is one of the attorneys for Fredrick Rodgers, the claimant named
7 in the foregoing petition; that he has read the same and knows the contents thereof, and that the facts therein stated are true.

JAMES H. HAYDEN.

Sworn to and subscribed before me this 24th day of April, 1901.

ROBERT C. MILLER, [SEAL.]
Notary Public.

McCAMMON & HAYDEN,
Attorneys for Claimant,
1420 *F Street N. W., Washington, D. C.*

II.—*Traverse.*

In the Court of Claims of the United States, December Term, A. D. 1900.

FREDERICK RODGERS
vs.
THE UNITED STATES. } No. 22002.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

8 III.—*Findings of Fact and Conclusion of Law.*

Filed April 22, 1901.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

I.

The claimant is a commissioned officer of the United States Navy.

II.

On March 3, 1899, the claimant was appointed a rear admiral in the line of the United States Navy and commissioned accordingly, and from that day until the date of the commencement of this suit held his said commission and performed the duties of his grade which were assigned him, namely, from March 3, 1899, to February 13, 1901, inclusive, shore duty as the president of the board of inspection and survey, and from February 14 to March 2, 1901, inclusive, sea duty as senior squadron commander of the United States naval force on the North Atlantic station.

III.

For his services rendered during the period between March 3, 1899, and June 30, 1899, the claimant was allowed pay at the rate of $4,675 per annum, which, for the said period, amounted to $1,536. For the same period the pay of a brigadier general of the United States Army, or pay at the rate of $5,500 per annum, would have amounted to $1,808.16, or $272.16 more than the said sum allowed the claimant.

IV.

For his services rendered during the period between July 1, 1899, and February 13, 1901, the claimant was allowed pay at the rate of $4,675 per annum, which, for the said period, amounted to $7,595.14. For the same period the pay of a major general in the United States Army, less 15 per centum, or pay at the rate of $6,375, would have amounted to $10,356.22, or $2,761.08 more than the said sum allowed the claimant.

V.

For the period between July 1, 1899, and February 13, 1901, the claimant was paid, as commutation in lieu of an allowance of quarters, the sum of $1,166. For the same period a major general of the United States Army would have been entitled to receive, as commutation in lieu of his proper allowance of quarters, the sum of $1,386.20, or $220.20 more than the sum paid to the claimant.

9 VI.

For his services rendered during the period between February 14 and March 2, 1901, inclusive, the claimant was allowed pay at the rate of $5,500 per annum, which, for the said period, amounted to $256.16. For the same period the pay of a major general of the United States Army, or pay at the rate of $7,500 per annum, would have amounted to $349.32, or $93.16 more than the said sum allowed the claimant.

VII.

On April 29, 1899, the Comptroller of the Treasury rendered a decision, wherein he ruled that the claimant, while on shore duty, should receive pay at the rate of $4,675 per annum (5 Comp. Dec., 750). The United States has failed to pay the claimant the said sums of $272.16, $2,761.08, $220.20, and $93.16, amounting to $3,346.60.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and the petition is therefore dismissed.

IV.—*Opinion of the Court.*

PEELLE, J., delivered the opinion of the court:

On March 3, 1899, the claimant was appointed a rear admiral in the United States Navy, and as such claims the pay and allowance of a brigadier general in the United States Army from that date until June 30, 1899, without any deduction for shore service. Since July 1, 1899, he claims the pay and allowances, except forage, of a major general in the United States Army, less 15 per centum pay, when on shore duty.

The claimant grounds his right to recover as stated on sections 7 and 13 of the act of March 3, 1899, entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States" (chap. 413, 30 Stat. L., 1004).

Section 7 reads:

"That the active list of the line of the navy, as constituted by section one of this act, shall be composed of eighteen rear admirals, seventy captains, one hundred and twelve commanders, one hundred and seventy lieutenant commanders, three hundred lieutenants, and not more than a total of three hundred and fifty lieutenants (junior grade) and ensigns: Provided, that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army. Officers, after performing three years' service in the grade of ensign, shall, after passing the examinations now required by law, be eligible to promotion to the grade of lieutenant (junior grade): Provided, that when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the army: And provided further, that nothing contained in this section shall be construed to prevent the retirement of officers who now have the rank or relative rank of commodore, with the rank and pay of that grade: And provided further, that all sections of the Revised Statutes, which, in defining the rank of officers or positions in the navy, contain the words 'the relative rank of' are hereby amended so as to read 'the rank of,' but officers whose rank is so defined shall not be entitled, in virtue of their rank, to command in the line or in other staff corps. Neither shall this act be construed as changing the titles of officers in the staff corps of the navy. No appointments shall me made of civil engineers in the navy on the active list under section fourteen hundred and thirteen of the Revised Statutes in excess of the present number, twenty-one."

At the time of the passage of that act there were, as we are advised, six rear admirals in the navy with the relative rank of major general in the United States Army, and ten commodores with the relative rank of brigadier general in the army.

By the provisions of section 7, excluding commodores from the active list of the line of the navy, the rank or grade of commodore is abolished and, in effect, merged into that of rear admiral. And

as the active list was, among other officers, to be composed of eighteen rear admirals, and only six were serving at the time of the passage of the act, there were vacancies to be filled by appointment, and in respect to certain of that grade it was provided "that each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army."

As the rank of commodore was abolisheed by the act, the claimant and others holding that grade were advanced by appointment, pursuant to Revised Statutes, section 1366, to the grade of rear admiral, and in part are "embraced in the nine lower numbers of that grade," so that for the purpose of pay a distinction is created by the act in the grade of rear admirals and special provision made therefor.

When the act was passed, though the relative rank of a commodore was that of a brigadier general in the army, the pay was less, and it was largely because the officers in the navy were paid less than the officers of corresponding rank in the army that dissatisfaction arose. So to meet that objection in part the rear admirals "embraced in the nine lower numbers of that grade" were given the pay and allowance of a brigadier general in the army.

Thus, by the abolition of the rank of commodore and the advancement of those theretofore in that grade to the nine lower numbers in the grade of rear admiral, their pay is increased from $5,000 (sea pay) to $5,500 per annum, an increase of 10 per cent. over the highest rate of pay theretofore received by them as commodores, while for shore duty they receive 15 per centum less pay, plus their allowance for commutation for quarters ($720), or in all $5,395 per annum, an increase of nearly 35 per cent. over their shore pay ($4,000) as commodores, and as vacancies occur in the grade above the nine, those embraced in said lower numbers will according to seniority be advanced, and they will then be entitled to receive the pay and allowances, except forage, of a major general in the army, as provided by section 13 of said act, which reads:

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army: Provided, that
11 such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: Provided further, that when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the army detailed for duty in similar places: Provided further, that naval chaplains, who do possess relative rank, shall have the rank of lieutenant in the navy; and that all officers, including warrant officers, who have been or may be appointed to the navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: And provided further, that no provision of this act shall operate to reduce the present pay of any commissioned officer now in the navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: And provided further, that nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the navy."

The claimant's contention that by virtue of the first proviso to section 7 he was entitled to the same pay and allowance as a brigadier general from the date of the approval of the act of March 3 to June 30, 1899, without any deduction for shore duty, and thereafter to the pay and allowances, except forage, of a major general in the army, less 15 per centum pay for shore duty, cannot be sustained without holding that section 13 superseded and abrogated section 7 in respect to the pay of the rear admirals "embraced in the nine lower numbers of that grade."

Both sections are part of the same act, and the first proviso to section 7 is a special provision for the class of officers there stated. There is also a special provision in the second proviso to the effect that "when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the army."

If the claimant's contention should prevail, it is questionable whether that provision would not also be abrogated; but whether that be correct or not, the general rule is that a general provision will not repeal a special provision unless there are express words to that effect or an irreconcilable conflict in the language used.

Legislation must, in case of doubt, be viewed in the light of the historical circumstances and surroundings to ascertain the meaning of the language employed. Prior to the passage of the act the highest or sea pay of a commodore was $5,000 per annum, shore duty $4,000, and leave or waiting orders pay $3,000. That of a rear admiral was for sea service $6,000 per annum, shore duty $5,000, and for leave or waiting orders pay $4,000, being less pay than that of brigadier or major general in the army, whose rank they assimilated, respectively, at the time of the passage of the act.

This was in part the mischief to be remedied.

12 The rear admirals in the service when the act was passed, and those appointed thereafter in the upper nine of that grade, became entitled, after June 30, 1899, by virtue of section 13, to $7,500 per annum, an increase over the prior sea pay of rear admirals of 25 per centum; and for shore service, 15 per centum less pay, plus their allowance for commutation for quarters ($864), making $7,239 per annum, an increase of nearly 45 per centum, while of course the percentage of increase in the pay of the com-

modores so advanced to the upper nine of that grade was still greater.

What reason the Congress had for making the distinction they did in the pay of rear admirals we do not know. It may have been based on long or distinguished services. But whatever the reason may have been, our duty is to give force and effect to the language used if it can be done.

Section 13 standing alone appears broad enough to justify the claimant's contention, but construing the two sections together as parts of the same act, and keeping in view the canon of interpretation as to the purpose of the act and the former service, status and pay of rear admirals and commodores, we think there is no difficulty in upholding section 7 as permanent legislation not inconsistent with the general provisions of section 13.

By the proviso to section 7 the rear admirals "embraced in the nine lower numbers of that grade" are segregated from the other officers there named and placed in a separate class for the purpose of fixing their pay; and special provision being made therefor, section 13 must be read with that in view; and thus reading the section, we interpret it to mean that commissioned officers not otherwise specially provided for in the act "shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." This construction is neither new nor novel, but is abundantly supported by authority.

Section 13 is in general terms, and the language there used does not indicate that it was the intention of the Congress to abrogate the special provision made in section 7 for the rear admirals "embraced in the nine lower numbers of that grade;" and special provision having been made for them it cannot be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made. (Endlich on the Interpretation of the Statutes, 223 *et seq.*)

"The reason and philosophy of the rule is that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms—or treating the subject in a general manner, and not expressly contradicting the original act—shall not be considered as intended to affect the more particular or pssitive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all." (Sedgwick on the Construction of Statutory and Constitutional Law, 98.)

Here is a case directly in point:

"Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act, as the legislature is not to be presumed to have intended a conflict." (Crane *v.* Reeder, 22 Mich., 322, 334, and the numerous authorities there cited.)

13

We cannot attribute to the Congress the folly of having in the same act provided two rates of pay for the same officers, one a temporary rate for four months at $5,500, and thereafter a permanent rate at $7,500.

It must therefore be held that the purpose and intent of the Congress was, as expressed in the proviso, that "each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the army," and that such pay will continue so long as they remain in the nine lower numbers of that grade.

The next question is, What deduction, if any, should be made from the claimant's pay while on shore duty, and when should such deduction begin—that is, whether from the date of the act, March 3, or after June 30, 1899?

Section 13 provides in express terms "that after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army." Hence, the proviso thereto fixing 15 per centum as the amount to be deducted from the pay of such officers when on shore duty did not, of course, become operative as to those whose pay was so fixed until after that date, *i. e.*, until after such officers became entitled to receive the pay and allowances therein provided for them.

But in respect to the rear admirals "embraced in the nine lower numbers of that grade," though their pay is elsewhere provided for, they are nevertheless included among the commissioned officers referred to, and for that reason the proviso as to them became operative upon the passage of the act—that is, when they became entitled to receive the pay thus specially provided for them.

This construction is not only in harmony with the language of the two sections, but also with the long-established policy of the Government, continued in section 13, to pay officers in the navy less when on shore duty than when at sea.

If the Congress had intended to except any of the commissioned officers referred to in section 13 from the operation of the proviso in respect to less pay for shore than for sea service they would have said so, and not having done so we cannot add an exception thereto. Therefore, our conclusion is that the pay of the claimant is fixed by the proviso to section 7, except that for shore service he will be entitled to "receive the allowances, but 15 per centum less pay than when on sea duty," as provided in said section 13.

For the reasons stated, the petition must be dismissed.

Nott, Ch. J., was not present when this case was tried and took no part in the decision.

14 V.—*Judgment of the Court.*

FREDERICK RODGERS
vs.
UNITED STATES. } No. 22002.

At a Court of Claims held in the city of Washington on the 22d day of April 1901 judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants and do order adjudge and decree that the petition of the claimant Frederick Rodgers be dismissed.

BY THE COURT.

15 In the Court of Claims of the United States.

FREDERICK RODGERS
vs.
THE UNITED STATES. } No. 22002.

Application for Appeal.

Now comes the claimant, Frederick Rodgers, by McCammon & Hayden, his attorneys, and prays the court to allow him an appeal to the Supreme Court of the United States from the judgment of this court, entered in the above-entitled cause on the 22nd day of April, 1901.

McCAMMON & HAYDEN,
Attorneys for Claimant.

Filed April 29, 1901.

At a Court of Claims held April 29, 1901 it was ordered that the foregoing application for appeal be allowed as prayed for.

BY THE COURT.

16 In the Court of Claims.

FREDERICK RODGERS
vs.
UNITED STATES. } No. 22002.

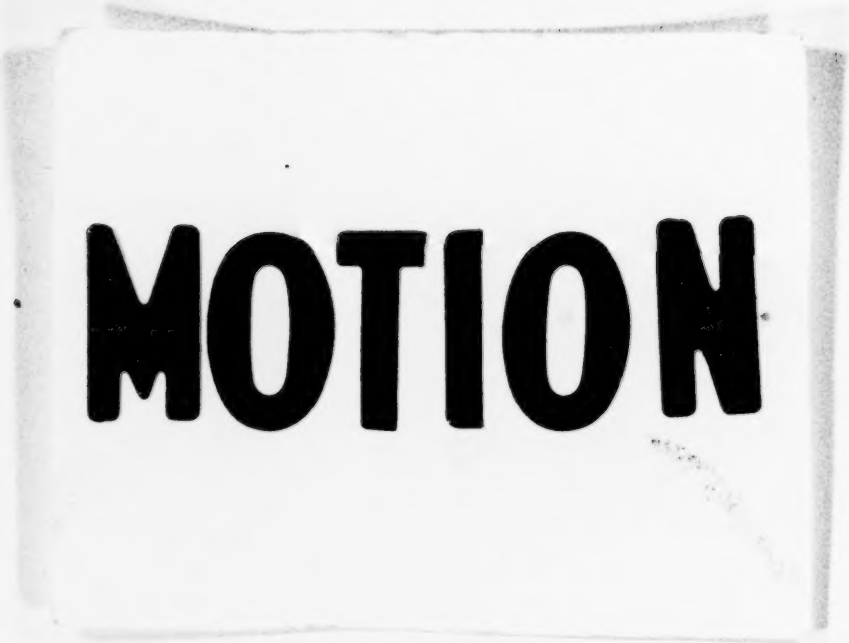
I John Randolph assistant clerk of the Court of Claims hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact, and conclusion of law, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at the city of Washington this 6th day of May, A. D. 1901

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18,149. Court of Claims. Term No. 317. Frederick Rodgers, appellant, *vs.* The United States. Filed May 11th, 1901.


MOTION

2302

No. 317.
Motion to advance.

Filed Nov. 19, 1901.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1901.

FREDERICK RODGERS, APPELLANT,
v.
THE UNITED STATES, APPELLEE.
} *No.* 317.

Appeal from the Court of Claims of the United States.

MOTION TO ADVANCE.

Now comes the appellant and moves the court to advance the above-entitled cause for hearing on a date as early as may be convenient and proper under the rules of court.

The matter involved in this case is the difference between the amount paid to the appellant for his services as a rear-admiral of the United States Navy, during the period between March 3, 1899, and March 3, 1901, and the amount which he claims to have been entitled to re-

ceive for those services. There was no issue of fact between the parties, and the determination of the question presented calls for nothing but the interpretation of Sections 7 and 13 of the act of Congress, approved March 3, 1899, entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States."*

Under the rulings of the Treasury Department and the judgment of the Court of Claims, from which this appeal runs, rear-admirals, embraced in the lower nine numbers of that grade, have received and are still receiving, and until the determination of this cause will receive, about $2,000 less per annum than the pay to which they have been, are, and will be entitled, if the appellant's contention with regard to the interpretation of the act of March 3, 1899, be correct.

The final decision of this cause will establish a rule to determine, not only the amounts of pay which the appellant and certain rear-admirals were entitled to receive for their services in the past, but also the rate of pay provided by law for officers of like rank, at the present time and in the future.

For this reason the appellant respectfully submits that an early hearing and decision of the cause will be but

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*SEC. 7. That the active list of the line of the Navy, as constituted by section one of this act, shall be composed of eighteen rear-admirals.

Provided, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowances as are now allowed a brigadier-general in the Army.

SEC. 13. That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore duty shall receive the allowances, but fifteen per centum less pay than when on sea duty.

just to the many persons interested, and will relieve the accounting officers from further difficulty in the application of the above-mentioned sections of the statute.

JOSEPH K. McCAMMON,
JAMES H. HAYDEN,
Attorneys for Appellant.

I join in the application.

J. K. RICHARDS,
Solicitor-General.

Brief for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1902.

Filed Feb. 19, 1903.

FREDERICK RODGERS,
Appellant,
vs.
THE UNITED STATES.
No. 311.

BRIEF FOR THE APPELLANT.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Appellant.

WASHINGTON, D. C.:
Gibson Bros., Printers and Bookbinders.
1903.

Supreme Court of the United States.

OCTOBER TERM, 1901.

FREDERICK RODGERS,
APPELLANT,
v.
THE UNITED STATES.
No. 317.

BRIEF FOR THE APPELLANT.

Statement of the Case.

This is an appeal from the Court of Claims. The claimant, Frederick Rodgers, a rear-admiral of the line of the navy, brought suit to recover the sum of $3,346.60, which he claimed as the balance due him on account of his pay and allowances for the period between March 3, 1899, and March 2, 1901. The claim is founded upon the law of Congress, known as the "Navy Personnel Act," which was approved on March 3, 1899, and entitled: "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States" (30 *Stat. L., p.* 1004). The applicable portions of this act are contained in Sections 7 and 13, and are as follows:

"SEC. 7. That the active list of the line of the Navy, as constituted by section one of this Act, shall be composed of eighteen rear-admirals, seventy captains, one hundred and twelve commanders, one hundred and seventy lieutenant commanders, three hundred lieutenants, and not more than a total of three hundred and fifty lieutenants (junior grade) and ensigns: *Provided*, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army. * * *"

"SEC. 13. That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy * * * shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty. * * *"

The findings (*pp.* 4–5) show that the claimant was appointed and commissioned a rear-admiral, on March 3, 1899. From the date of his appointment until March 2, 1901, he was one of the rear-admirals, "embraced in the lower nine numbers of that grade." Throughout the period in question he performed such duties of his grade as were assigned to him, serving on shore from March 3, 1899, until February 13, 1901, and for the rest of the time at sea (*Finding II, p.* 4). While on shore he received pay at the rate of $4,675 a year, or the pay of a brigadier-general (*R. S. U. S., Sec.* 1261) less fifteen per centum, and received commutation in lieu of the allowances of a brigadier-general, except that for forage (*Findings III, IV, and V, p.* 5). While at sea he received pay at the rate of $5,500 a year which is the pay provided by law for a brigadier-general (*Finding VI, p.* 5).

In paying the claimant, the disbursing officers of the navy were governed by a decision of the Comptroller of the Treasury, rendered on April 29, 1899 (*Finding VII, p.* 5).

It will be found convenient to divide the claim into three items, one relating to each of the following periods: March 3 to June 30, 1899; July 1, 1899, to February 13, 1901, and February 14 to March 2, 1901.

The case will then resolve itself into these propositions:

I. Between March 3 and June 30, 1899, the claimant was entitled to receive the pay and allowances of a brigadier-general, without any deduction.

II. Between July 1, 1899, and February 13, 1901, he was entitled to pay at the rate of $6,375 per annum, being the pay of a major-general (*R. S. U. S., Sec.* 1261), less fifteen per centum, and was entitled to the allowances of a major-general, except that for forage.

III. From February 14 to March 2, 1901, he was entitled to the pay and allowances of a major-general, without deduction.

The difference between the claimant's pay and allowances for the whole period covered by the claim, at the rates claimed, and the amount actually received by him during that time amounts to $3,346.60 (*Finding VII, p.* 5).

By its judgment the Court of Claims dismissed the petition (*p.* 11).

Specifications of Error.

The errors of the Court of Claims, assigned by the appellant and intended to be urged, are these:

1. The said court erred in ruling that the claimant was not entitled to the pay and allowances of a brigadier-

general, without any deduction, for the period from March 3 to June 30, 1899.

2. The said court erred in ruling that the claimant was not entitled to the pay of a major-general, less fifteen per centum, and the allowances of a major-general, except forage, for the period from July 1, 1899, to February 13, 1901.

3. The said court erred in ruling that the claimant was not entitled to the pay and allowances of a major-general for the period from February 14 to March 2, 1901.

4. The said court erred in dismissing the petition.

Argument.

The questions of law raised by this appeal depend for their determination upon the interpretation of the parts of sections 7 and 13 of the "Navy Personnel Act," which have been quoted. With the view of getting a better understanding of these sections, it is proper and desirable to consider the act as a whole, the circumstances attending its passage, and the general intent of Congress with respect to the reorganization of the navy (*Platt* v. *Railway*, 99 *U. S.* 48; *U. S.* v. *Freeman*, 3 *Howd.* 556, 565).

Prior to the passage of "Navy Personnel Act," officers of the navy, though entrusted with the performance of duties, quite as arduous and important as those of army officers of corresponding rank, were given much less pay than the latter. This had occasioned discontent throughout the navy, and Congress, appreciating the injustice of it, proceeded to remedy the difficulty by making the pay of officers of corresponding rank in the army and navy substantially the same (*Sec.* 13, *supra*).

To meet the necessities of our increased naval establishment, the number of officers in each grade was increased.

Of officers of flag rank there had been two distinct grades—rear-admirals and commodores. There had been six of the former and ten of the latter. The rear-admirals corresponded in rank with major-generals; the commodores with brigadier-generals (*R. S. U. S., Sec.* 1446). The grade of commodore did not exist in the navies of other nations and had been found to be disadvantageous. It was abolished. Provision was made for but one regular grade of flag officers, namely, that of rear-admiral, and the number in that grade was increased to eighteen (*Sec.* 7, *supra*). Every rear-admiral, commissioned on March 3, 1899, forthwith became the equal in rank of each other officer in the grade, except in point of seniority, and hence became subject to all of the obligations of, and liable to be assigned to any duty appropriate for, a rear-admiral. There was no division of the grade into senior and junior rear-admirals, as in the case of lieutenants, where lieutenants and "lieutenants (junior grade)" form two wholly distinct grades.

The general rule, which has always been observed in the navy and in the army as well, with respect to the compensation of officers, is that pay and allowances should be increased proportionately with advancement in rank. This was not done, merely because the services of officers become more valuable, as they grow older in the service but also because each advancement casts upon an officer increased obligations and renders it more expensive for him to maintain himself in a manner conformable to his position. The action of Congress in equalizing the compensation of officers of the army and navy, of corresponding rank, was in accordance with this rule. The abolition of the grade of commodore left the navy with no officers corresponding in rank with brigadier-generals, and, therefore, none whose pay should be

equal to that of brigadier-generals, if Congress has consistently followed the prevailing rule and the general intent of the "Navy Personnel Act."

According to the decision of the court below the act makes an exception, in the case of one-half of the rear-admirals, to whom it gives rank corresponding with that of major-general; but whom it places on a par with a lower grade, for purposes of compensation. Let us see whether such an exception is justified by anything contained in the act.

I.

Between March 3, and June 30, 1899, the claimant was entitled to receive the pay and allowances of a brigadier-general, without any deduction.

Section 7 of the "Navy Personnel Act" (*supra*) became operative on the date of its approval (March 3, 1899). Forthwith, it created twelve vacancies in the grade of rear-admiral and forthwith abolished the office of commodore. The ten officers, including the claimant, who had filled the numbers of the grade of commodore, and the two officers, standing at the head of the list of captains, were appointed and commissioned as rear-admirals. Of the twelve, those occupying the highest three numbers were allowed, during the period between March 3, and July 1, 1899, the compensation provided for rear-admirals by section 1556, R. S. U. S., namely:

> "* * * When at sea, six thousand dollars; on shore duty, five thousand dollars; on leave, or waiting orders, four thousand dollars."

With the one exception, Section 1556 R. S. U. S., and other provisions of law, with respect to the pay

and allowances of officers in the line of the navy, remained in force until July 1, 1899. They were not, until then, affected by the general repealing clause (*Sec.* 26) of the "Navy Personnel Act," because the body and first proviso of Section 13 of that act (*supra*) providing for the equalization of the pay of officers of the army and navy, did not become operative until "after June thirtieth, eighteen hundred and ninety-nine." The exception referred to was that with respect to the compensation of the remaining nine of the newly commissioned rear-admirals, among whom the claimant was included and who occupied the nine lower numbers of their grade. This was provided for by the first proviso of Section 7 of the "Navy Personnel Act" (*supra*) which took effect on the date of its passage, (*Matthews* v. *Zane*, 7 *Wheat.* 164; *Gardner* v. *Barney*, 6 *Wall.* 499.) The decisions of the Comptroller and the Court of Claims agree that Section 7 took effect on the date of its passage, and then operated as a repeal of earlier statutes, relating to the pay of the rear-admirals, occupying the lower nine numbers of the grade (*p.* 10, *also* 5 *Dec. Comp.* 750, 752). But both of them held that by reason of "long established policy," Section 7 could not be regarded as complete, and must be considered as limited and controlled by the first proviso of section 13, which for purposes of such control possessed some form of vitality before July 1, 1899, when it became operative, and in its pre-natal condition attached itself to section 7, causing it to provide that each rear-admiral of the nine lower numbers when on shore should receive fifteen per centum less than the pay of a brigadier-general. This ruling is in conflict with the letter of the statute:

> "*Provided*, That each rear-admirial embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the army."

It is in conflict, likewise, with other decisions of the comptroller and of the court below. The former held (5 *Dec. Comp.*, 713, 714 *and Id.* 966, 967,) that the proviso of section 13, "*did not become operative until after June* 30, 1899, *when the section of which it forms a part goes into effect. It does not constitute a part of the 'existing law,' according to which an officer shall receive pay.*" The Court of Claims in its opinion in the present case said (p. 9):

> "Section 13 is in general terms, and the language there used does not indicate that it was the intention of the Congress to abrogate the special provision made in section 7 for the rear-admirals 'embraced in the nine lower numbers of that grade,' and special provision having been made for them *it cannot be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made.* (*Endlich on the Interpretation of Statues*, 223, *et seq.*)"

In the case of *Royce* v. *U. S.* (*Decided, April* 29, 1901), which was a suit founded upon another clause of section 13, the Court of Claims held that this section could have no retroactive effect and could not be considered for the purpose of computing the pay of officers before July 1, 1899.

This court has adopted and always followed the rule that the language of a statute cannot be disregarded in favor of any supposed policy of Congress, such as that of giving officers on shore duty less pay than when at sea.

Mr. Justice Story, delivering the opinion of the court

in the case of *United States* v. *Dickson* (15 *Pet.* 141, 146), said :

> " * * * The general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that when the enacting clause is general in its language and objects and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms."
>
> See also : *St. Paul, etc., Ry.* v. *Phelps* (137 *U. S.* 528).

The language of section 7 was clear and complete. It made no exception, with respect to the pay of rear-admirals, when on shore duty. It allowed the officers concerned all of the allowances of a brigadier-general, including forage. Clearly it was not competent for executive officers of the Government to interpolate the embryonic provisions of section 13 into section 7, for the purpose of engrafting an exception upon the latter. In the case of *Yturbide* v. *U. S.* (22 *Howd.* 290) it was said :

> "If there be no saving in a statute the court cannot add one on equitable grounds."

We submit that from March 3, 1899, as long as the first proviso of section 7 remained unrepealed, the claimant was entitled to pay, at the rate of $5,500 a year, and to all of the allowances which a brigadier-general was entitled to receive on March 3, 1899.

II.

Between July 1, 1899, *and February* 13, 1901, *the claimant was entitled to the allowances of a major-general,*

except forage, and the pay of a major-general, less fifteen per centum.

Section 13 of the "Navy Personnel Act" provides:

> "That after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the navy and of the medical and pay corps shall receive the same pay and allowances as are or may be provided by or in pursuance of law for the officers of corresponding rank in the army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty. * * *"

It cannot be denied that if this stood alone, there could be no doubt of the claimant's right to receive compensation as claimed for the period in question He was a rear-admiral, corresponding in rank with a major-general. We contend that on July 1, 1899, when section 13 took effect, and for the first time "constituted part of the 'existing law' according to which an officer should receive pay," it repealed the first proviso of section 7. Hence that on and after July 1, 1899, it did stand alone, so far as the compensation of this claimant was concerned.

It is true that repeals by implication are not favored and that a later provision of a statute will not be regarded as superseding an earlier one without urgent reasons, but we believe that there is ample ground for our contention, and that it is the only one consistent with the language employed and the intent of Congress.

The rule of construction laid down by this court in several decisions is applicable to the precise question before us. In the case of *King* v. *Cornell* (106 *U. S.* 395, 396), this was said:

> "While repeals by implication are not favored, it

> is well settled that where two acts are not in all respects repugnant, if the latter act covers the whole subject of the earlier, and embraces new provisions which plainly show that it was intended as a substitute for the first, it will operate as a repeal. This subject was fully considered in *United States* v. *Tynen*, 11 Wall. 88, where the early authorities are cited and reviewed at considerable length."

The decision in the case of *Red Rock* v. *Henry* (106 *U. S.* 596, 601) is to the same effect.

In the case of *District of Columbia* v. *Hutton* (143 *U. S.* 18, 26–27), it was held:

> "We are not unmindful of the rule that repeals by implication are not favored. But there is another rule of construction equally sound and well settled which we think applies to this case. Stated in the language of this court in *United States* v. *Tynen*, 11 Wall. 88, 92, it is this: 'When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the later act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act.' See also *Murdock* v. *Memphis*, 20 Wall. 590, 617; *Tracy* v. *Tuffly*, 134 U. S. 206, 223; *Fisk* v. *Honario*, 142 U. S. 459."

Section 13 covers "the whole subject" dealt with by section 7, for in terms it embraces all commissioned officers of the line of the navy. If section 7 were allowed to stand after section 13 took effect, it would constitute in two respects, a marked exception to the uniform rule which Congress endeavored to establish.

In the first place it would result in the singling out of a little group of nine officers, from the entire list of the navy, and cause them to correspond in rank and obligations with one grade in the army, but as to compensation, to correspond with a lower grade.

In the second place, it would fix, permanently, the compensation of this group of officers, giving them the pay and allowances which were allowed certain officers of the army on March 3, 1899. If the pay of such army officers should, subsequently, be increased or reduced, the change would not affect the naval officers, for the first proviso of section 7 is as follows:

> "* * * Each rear-admiral, embraced in the nine lower numbers of that grade shall receive the same pay and allowances *as are* NOW *allowed* a brigadier-general in the army."

Whereas it was intended by section 13 not only to place officers of the navy on a plane of substantial equality with army officers, but to maintain that condition of things. In other words, if the compensation of army officers of any grade should be changed the compensation of naval officers of the corresponding rank would be increased or decreased to an equal extent, for it is provided (*Sec.* 13) that all naval officers of the line and medical and pay corps:

> " * * * shall receive the same pay and allowances *as are or* MAY BE *provided by or in pursuance of law* for the officers of corresponding rank in the army."

These radical differences between the two sections of the act, show that the proviso of section 7 was not intended to be permanent, but merely to provide for the

period of about four months which would intervene between the passage of the act and the date, when section 13 should become operative.

The court below said (*p.* 10) that it could not "attribute to the Congress the folly of having in the same act provided two rates of pay for the same officers, one a temporary rate, for four months at $5,500, and thereafter a permanent rate, at $7,500." We submit that it was not for the Court of Claims to say whether Congress had acted wisely or not. Moreover the provision of two rates of pay for the officers in question, cannot be pronounced foolish. All of them, except two, had been commodores, which grade was abolished on March 3, 1899 (*Secs.* 7 *and* 26, *supra*), and all provisions of law with respect to it, including the one which fixed the pay of commodores, were repealed. For four months after the passage of the act, or until the end of the current fiscal year, all other officers were to be paid in accordance with the navy pay table (*Sec.* 1556, *R. S. U. S*). Some provision had to be made for the pay of the nine officers. It would have been fair to provide that they should receive the pay formerly allowed commodores until "after June thirtieth." For some reason Congress did not do this. To allow them at once the navy pay of rear-admirals would have been a discrimination in their favor, giving them an advance both in rank and pay, four months before all other officers. Therefore, Congress did a reasonable thing in providing that for this short period they be allowed the same compensation as officers of the army, with whom they had corresponded in rank, when commodores.

III.

From February 14 *to March* 2, 1901, *the claimant was entitled to the same pay as a major-general and the allowances of a major-general, except forage.*

This proposition raises precisely the same questions of law, as those considered under the preceding division of this brief, the only difference being that during this period the claimant was employed on sea duty and accordingly was entitled to the pay of a major-general, without deduction.

JOS. K. McCAMMON,
JAMES H. HAYDEN,
Of Counsel for the Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

FREDERICK RODGERS, APPELLANT,
v.
THE UNITED STATES. } No. 317.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The appellant's amended petition filed in the Court of Claims alleges that there is a remainder due him from the United States in the sum of $3,358.13 for his services and certain allowances as rear-admiral in the Navy.

The issues presented are questions of law arising by reason of certain sections of the act of March 3, 1899, commonly known as the "Navy personnel act."

We therefore give the sections applicable in order that the court may have the same in convenient and ready form for reference.

AN ACT to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in

Congress assembled, That the officers constituting the Engineer Corps of the Navy be, and are hereby, transferred to the line of the Navy, and shall be commissioned accordingly. (See 30 Statutes at Large, page 1004.)

SEC. 7. That the active list of the line of the Navy, as constituted by section one of this act, shall be composed of eighteen rear-admirals, seventy captains, one hundred and twelve commanders, one hundred and seventy lieutenant-commanders, three hundred lieutenants, and not more than a total of three hundred and fifty lieutenants (junior grade) and ensigns: *Provided, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army.* Officers, after performing three years' service in the grade of ensign, shall, after passing examinations now required by law, be eligible to promotion to the grade of lieutenant (junior grade): *Provided*, That when the office of chief of bureau is filled by an officer below the rank of rear-admiral, said officer shall, while holding said office, have the rank of rear-admiral and receive the same pay and allowance as are now allowed a brigadier-general in the Army: *And provided further*, That nothing contained in this section shall be construed to prevent the retirement of officers who now have the rank or relative rank of commodore with the rank and pay of that grade: *And provided further*, That all sections of the Revised Statutes which, in defining the rank of officers or positions in the Navy, contain the words "the relative rank of" are hereby

amended so as to read "the rank of;" but officers whose rank is so defined shall not be entitled in virtue of their rank to command in the line or in other staff corps. Neither shall this act be construed as changing the titles of officers in the staff corps of the Navy. No appointments shall be made of civil engineers in the Navy on the active list under section fourteen hundred and thirteen of the Revised Statutes in excess of the present number, twenty-one. (See 30 Statutes at Large, page 1005.)

SEC. 13. That, after June thirtieth, eighteen hundred and ninety-nine, *commissioned officers of the line of the Navy* and of the Medical and Pay Corps *shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: Provided, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty;* but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places: *Provided further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy; and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of

law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: *And provided further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided further*, That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy. (See 30 Statutes at Large, page 1007.)

RELATIVE RANK BETWEEN OFFICERS OF THE NAVY AND OFFICERS OF THE ARMY.

Section 1466, Revised Statutes, page 256, provides as follows:

The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army shall be as follows, lineal rank only being considered:

The vice-admiral shall rank with the lieutenant-general.

Rear-admirals with major-generals.

Commodores with brigadier-generals.

Captains with colonels.

Commanders with lieutenant-colonels.

Lieutenant-commanders with majors.

Lieutenants with captains.

Masters with first lieutenants.

Ensigns with second lieutenants.

PAY OF OFFICERS OF THE ARMY.

Section 1261, Revised Statutes, provides for pay of major-general, $7,500 per year; brigadier-general, $5,500 per year.

PAY OF NAVY OFFICERS PRIOR TO THE ACT OF MARCH 3, 1899.

By section 1556 of Revised Statutes the pay of rear-admiral was as follows:

When at sea, $6,000; on shore duty, $5,000; on leave or waiting orders, $4,000.

Commodores when at sea, $5,000; on shore duty, $4,000; on leave or waiting orders, $3,000.

COMMUTATION OF QUARTERS.

In lieu of an allowance of quarters a major-general is paid $72 per month, and a brigadier-general $60 per month.

By reason of said "Navy personnel act" the appellant, Frederick Rogers, on March 3, 1899, was promoted from the rank of commodore to the rank of rear-admiral, and it is conceded by him that he was one of the second nine of the eighteen rear-admirals, or one of the rear-admirals embraced in the nine lower numbers of the grade of rear-admirals, and continued as one of such nine lower numbers during all the period of time covered by this case.

APPELLANT'S CONTENTION.

By reason of the following clause in the first proviso of said section 7 the appellant contends that he is entitled to receive the full pay of a brigadier-general from the time of the passage of the act of

March 3, 1899, to June 30, 1899, inclusive, at the rate of $5,500 per year, without any deduction by reason of shore duty, said clause being as follows:

> *Provided, That each rear-admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier-general in the Army.*

Inasmuch as rear admirals have the same relative rank as major-generals and the compensation of major-generals is $7,500 per year, appellant further contends that by reason of section 13 of said act he is entitled to receive compensation from and after June 30, 1899, at the rate of $7,500 per year, except forage, less 15 per centum by reason of the services being shore duty.

Appellant further contends that from July 1, 1899, to the date of the commencement of this action in the Court of Claims he is entitled to receive the same amount for commutation for quarters as is allowed major-generals.

DEFENDANT'S CONTENTION.

On behalf of the Government we insist that the clause quoted from the first proviso of section 7 is a piece of special legislation for the purpose of fixing a basis for pay of and applicable to designated and specific officers therein pointed out, to wit, rear-admirals in the nine lower numbers.

That section 13 of the act, which provides for pay of commissioned officers of the line of the Navy, is in general terms and is a general statute.

That section 13 being general in its terms does not

repeal, abrogate, or supersede the special legislation found in the clause quoted from the first proviso of section 7.

That the appellant is entitled to pay from March 3, 1899, to the time of the commencement of this action at the rate of the pay of a brigadier-general, less 15 per centum by reason of his shore service, and is entitled to commutation for quarters at the rate of $60 per month, all of which pay and allowances he has received.

ARGUMENT.

The proviso in section 7 of said "Navy personnel act" is so clearly a special provision which relates to particular officers of a class that it would appear unseemly to present argument in support of the fact. By the terms of said proviso it is seen that it has special reference to certain rear-admirals therein specifically pointed out, and no language could be used to convey the idea of special legislation more forcibly than that which Congress has seen proper to use in said proviso. It is clearly and prominently a piece of special legislation affecting specially designated officers. In order to sustain appellant's contention it is necessary for the court to find that the first proviso of said section 7 is repealed by section 13 of the same act.

It certainly is not to be presumed that Congress would insert a proviso in one section of an act and then repeal that proviso in subsequent general terms inserted in another section of the same act.

There is no expressed intention of Congress found in

section 13 to repeal any part of section 7, and if said section 13 has the effect of repealing the first proviso in section 7, it must be by implication and not by reason of any expressed intention.

It is a well-settled rule that repeals of statutes by implication are not favored, and the principle is recognized by all of the law writers on interpretation and construction of laws and is uniformly followed by the court of last resort of the various States and by this court. As a corollary deduced from the preceding proposition, it has become a universal rule in the interpretation of statutes that subsequent legislation, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the particular and specific provisions of the earlier statute. In support of this corollary, Black, on Interpretation of Laws, says:

> As a corollary from the doctrine that implied repeals are not favored, it has come to be an established rule in the construction of statutes that a subsequent act, treating the subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.

The learned author, on page 117, further states:

> So, again, a special act exempting certain property from taxation is not to be considered

> as impliedly repealed by a subsequent general statute imposing taxes generally, although the language of the latter act is broad enough to cover the property exempted by the previous law. * * * Even where two statutes are passed upon the same day, one of which relates to a particular class of cases, and the other is of a more general character, their provisions being repugnant, it is the former which must prevail as to the particular class of cases therein referred to.

Sedgwick on the Construction of Laws, says:

> In regard to the mode in which laws may be repealed by subsequent legislation, it is laid down as a rule that a general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. * * * The reason and philosophy of the rule is that when the mind of the legislator has been turned to the details of a subject and he has acted upon it a subsequent statute in general terms or treating the subject in a general manner and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction in order that its words shall have any meaning at all.

(See Sedgwick on the Construction of Statutory and Constitutional Law, p. 97; also see the large number of citations found on pp. 98 and 99 of the work cited.)

In further support of the doctrine that general legislation does not repeal or abrogate special legislation

we cite the 22d Mich. Reps., p. 334, in which the court uses the following language:

> * * * Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are cotemporaneous, as the legislature is not to be presumed to have intended a conflict.

(See also a large number of authorities cited by the court on said page 334.)

Now, keeping in view the fact that the first proviso in section 7 has reference to certain officers therein specifically designated and by its terms is clearly and prominently a piece of special legislation for certain rear-admirals of the whole class of rear-admirals, and applying the foregoing standard of interpretation, it becomes the duty of the court to reconcile any apparent conflict in the two sections, if the same can be done, so as to leave both sections in full force and effect.

We quote from the learned opinion of the Court of Claims in passing upon the question now before this court as follows:

> Section 13 standing alone appears broad enough to justify the claimant's contention, but construing the two sections together as parts of the same act, and keeping in view the canon of

interpretation as to the purpose of the act and the former service, status, and pay of rear-admirals and commodores, we think there is no difficulty in upholding section 7 as permanent legislation not inconsistent with the general provisions of section 13.

By the proviso to section 7 the rear-admirals "embraced in the nine lower numbers of that grade" are segregated from the other officers there named and placed in a separate class for the purpose of fixing their pay; and special provision being made therefor, section 13 must be read with that in view; and thus reading the section, we interpret it to mean that commissioned officers not otherwise specially provided for in the act "shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army." This construction is neither new nor novel, but is abundantly supported by authority.

Section 13 is in general terms, and the language there used does not indicate that it was the intention of the Congress to abrogate the special provision made in section 7 for the rear-admirals "embraced in the nine lower numbers of that grade;" and special provision having been made for them it can not be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made.

At the time of the passage of the statute under consideration there were six rear-admirals in the United States Navy with the relative rank of major-general

and ten commodores with the relative rank of brigadier-general. The six rear-admirals, as we are informed, had performed their allotted duties in sea service and at foreign posts under the rules and regulations of the Navy, and there were not sufficient rear-admirals to place in charge of foreign stations and to perform sea duty to foreign countries.

Section 1363 of the Revised Statutes provided for ten rear-admirals, but in the appropriation act of August 5, 1882, the number was reduced to six, as above stated. (See Stat. L., 22, p. 286.)

The office or rank of commodore in the Navy had been, to a great extent, abolished by other naval powers, and was not considered of sufficient dignity and significance for an officer representing our Government in diplomatic and social relations with other nations. The rank of commodore in the United States Navy was little above that of captain, and when our Navy Department did not have sufficient rear-admirals to assign to foreign stations or send with fleets to foreign waters, the Department was necessitated to assign commodores and captains to such duties as *acting rear-admirals*, and in such cases they performed the duties of a rear-admiral, signed the reports and documents as such acting rear-admiral, were introduced and received by foreign powers as rear-admirals, and assumed all the responsibilities and performed all the requirements of the office of rear-admiral; yet these officers, while performing these duties and assuming these responsibilities of rear-admirals, received the

compensation of commodores only. A notable instance of a commodore performing such responsible duties is that of Commodore Walker, when placed in charge some years ago of the White Squadron. He was designated as acting rear-admiral, and was received at all ports and foreign stations as rear-admiral, and as such performed the official and diplomatic duties of a rear-admiral. Congress, therefore, by the "Navy personnel act," provided a higher rank for those ten commodores, in order that they might have the full title due them in the performance of their duties and for the purpose of placing them upon an equal standing and conferring upon them an equal dignity with that of foreign naval officers whom their duties necessitated them to meet. Prior to the passage of the "Navy personnel act" vacancies in the rank of rear-admiral were supplied during the time of war from those officers on the active list in the line of the Navy not below the grade of commanders, and the promotions were made from those who had eminently distinguished themselves by courage, skill, and genius in their profession. (See section 1365 of the Revised Statutes.) During peace vacancies in the grade of rear-admiral were filled by regular promotion from the list of commodores. (See section 1366 of the Revised Statutes.) By abolishing the grade of commodore and providing that the number of rear-admirals should be increased to 18, as is seen by section 7 of the act, twelve vacancies were created in the grade of rear-admiral.

Thus it will be seen that in order to fill all the

vacancies existing in the grade, it was necessary not only to advance the ten officers who had previously held the grade of commodore, but was further necessary to go to a grade still lower than commodore to complete the full complement of the eighteen rear-admirals. Congress undoubtedly realized that it would be unjust to the rear-admirals who were already in the grade, and who had rendered long and distinguished services, to suddenly advance these ten commodores, who were receiving the maximum pay of $5,000 per year, to a position commanding a compensation of $7,500 a year, to which the old rear-admirals became entitled by the passage of the act. By discriminating between the first and second nines of the eighteen rear-admirals for the purposes of pay and providing that the second nine should receive the same pay and compensation as a brigadier-general in the Army, Congress not only advanced these commodores to a dignity and grade that they had not previously enjoyed, but in addition advanced their compensation to a considerable extent. But in doing so the legislators clearly showed that it was not their purpose or intention to put these officers so suddenly advanced to higher dignity and grade upon the same footing, for the purposes of pay, as the old rear-admirals. It should be remembered that the vacancies to which we have referred in the list of rear-admirals were all vacancies created by section 7, and that the vacancies were made not necessarily for the purpose of providing places for officers who had eminently distinguished themselves by

courage, skill, and genius, as mentioned in section 1365 of the Revised Statutes, but for the purposes of a general reorganization of the line of the Navy. It would certainly seem unreasonable for us to conclude that Congress intended to make a sudden advancement of these ten commodores from a position of $5,000 per year to one of $7,500 per year and carrying with it the increased dignity and honor that a rear-admiral enjoys by reason of his position, and this without any other necessity than simply the filling of the vacancies existing in the class of rear-admirals, and, as we said, not necessarily by reason of the said commodores having distinguished themselves as described in section 1365 of the Revised Statutes.

If the appellant's attorneys are correct in their view of the purposes, objects, and intentions of the act, then by giving section 13 the construction contended for by them, there are no officers remaining in the Navy with the pay and compensation of a brigadier-general in the Army. Is it not reasonable to assume that Congress intended to preserve the relative rank, for the purposes of pay, between brigadier-generals in the Army and some corresponding officer in the Navy, and therefore preserved that relative rank for such purpose between the nine lower numbers of the eighteen rear-admirals and the brigadier-generals in the Army?

The authors of the "Navy personnel act" recognized the constant and rapid changes occurring in the personnel of the active list of rear-admirals by reason of death and retirement. Of the original six rear-admirals

upon the active list but three remain; of the number composing the first nine of the list as first constituted after the passage of the act, but five remain, the others having died or been retired. The first nine in the list is being constantly filled by advancement of those gentlemen who are upon the second nine of the list and in the natural line of promotion. The appellant in this case has been advanced until he now stands as sixth among the first nine of the list of eighteen rear-admirals and consequently is now drawing the compensation of a major-general, to wit, the sum of $7,500 a year. (See Register of the Navy.)

FIFTEEN PER CENTUM REDUCTION.

Appellant contends that inasmuch as the first proviso in section 7 makes no reduction from the pay of a rear-admiral by reason of shore service, he is entitled to the full pay of a brigadier-general from March 3, 1899, until June 30, 1899. Section 13, as has been seen, provides for pay of commissioned officers of the line of the Navy, and in the first provision of said section 13 makes a reduction of 15 per centum less pay when on shore duty. The opinion of the Court of Claims in passing upon this phase of the case presents a strong argument in favor of the Government's contention. The court says:

> The next question is, What deduction, if any, should be made from the claimant's pay while on shore duty, and when should such deduction begin—that is, whether from the date of the act, March 3, or after June 30, 1899?

Section 13 provides in express terms "that after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army." Hence, the proviso thereto fixing 15 per centum as the amount to be deducted from the pay of such officers when on shore duty, did not, of course, become operative as to those whose pay was so fixed until after that date, i. e., until after such officers became entitled to receive the pay and allowances therein provided for them.

But in respect to the rear-admirals "embraced in the nine lower numbers of that grade," though their pay is elsewhere provided for, they are nevertheless included among the commissioned officers referred to, and for that reason the proviso as to them became operative upon the passage of the act—that is, when they became entitled to receive the pay thus specially provided for them.

This construction is not only in harmony with the language of the two sections, but also with the long-established policy of the Government, continued in section 13, to pay officers in the Navy less when on shore duty than when at sea.

If the Congress had intended to except any of the commissioned officers referred to in section 13 from the operation of the proviso in respect to less pay for shore than for sea service

> they would have said so, and not having done so we can not add an exception thereto. Therefore our conclusion is that the pay of the claimant is fixed by the proviso to section 7, except that for shore service he will be entitled to "receive the allowances, but 15 per centum less pay than when on sea duty," as provided in said section 13.

We urge that the view expressed in the opinion of the Court of Claims harmonizes the two statutes under consideration, leaving both sections in full force and effect. Any apparent conflict is removed and the different sections, parts of sections, and provisos, in so far as they relate to or affect the pay of rear-admirals, form an intelligent and connected piece of legislation entirely consistent and in harmony with the needs and demands for such legislation, and we believe is a fair presentation of the intention of the legislators. Such interpretation is in accordance with the spirit and reason of the law and in accord with the preexisting body of the act of which these provisos and sections form a part.

EXECUTIVE CONSTRUCTION.

It is true that the act under consideration is of comparatively recent date and there has been but little time for it to receive judicial consideration, but in view of the references in appellant's brief to the opinions and interpretations given this statute by the Comptroller, we believe it will not be considered wholly inappropriate if we call attention to the construction which the statute received soon after its enactment and which

ever since has been and now is recognized by the Auditor of the Navy Department and the Comptroller of the Treasury. The Auditor of the Navy Department referred the question to the Comptroller of the Treasury for his opinion, and on April 29, 1899, the Comptroller held in accordance with the view we have presented in support of the Government's contention (See 5th Dec. of the Comp., p. 750.)

The Comptroller's opinion has been recognized and followed by the Auditor of the Navy Department ever since and the opinion of the Court of Claims supports the Comptroller in every respect.

Of course the contemporary construction given to the statute by an officer intrusted with its execution can not be adopted by the judiciary if contrary to the judicial construction; but where a statute is doubtful in its terms, much weight is usually given to the interpretation and construction placed upon it immediately after its passage by the officers having in charge the execution of the same.

This doctrine of "contemporaneous construction," though well recognized in its proper sphere, may not be applicable in this case; but, as before stated, we do not deem it inappropriate to present to the court the interpretation placed upon the statute by the Auditor of the Navy Department and the Comptroller of the Treasury.

COMMUTATION FOR QUARTERS.

As to appellant's claim for commutation for quarters at the rate allowed a major-general in the Army, we

presume it will not be questioned that it is controlled entirely by the decision of the court upon the former questions. If appellant, as rear-admiral in the second nine of the list of rear-admirals in the Navy, is entitled to the pay and allowances of a major.general in the Army from and after July 1, 1899, then we concede that appellant's claim for commutation for quarters should be allowed. But on the other hand, should the court sustain the Government's position upon the preceding questions and hold that the appellant, being one of the nine lower numbers of the list of rear-admirals, is entitled to pay at the rate of pay allowed a brigadier-general in the Army, then appellant's claim for additional allowance as commutation for quarters can not be sustained. The judgment of the court upon the questions first presented will control appellant's claim for commutation for quarters.

We respectfully submit that the judgment of the court below dismissing the petition should be affirmed.

JOHN Q. THOMPSON,
Assistant Attorney.

LOUIS A. PRADT,
Assistant Attorney-General.

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Supreme Court of the United States.

No. 317.—October Term, 1901.

Frederick Rodgers, Appellant, vs. The United States. } Appeal from the Court of Claims.

[April 7, 1902.]

This is an appeal from the Court of Claims. The claimant, Frederick Rodgers, a rear admiral of the line of the Navy, brought suit to recover the sum of $3,358.13, which he claims as the balance due him on account of pay and allowances for the period between March 3, 1899, and March 2, 1901. The claim is founded upon the law of Congress, known as the "Navy Personnel Act," which was approved on March 3, 1899, and entitled "An act to reorganize and increase the efficiency of the personnel of the Navy and Marine Corps of the United States." (30 Stat. 1004.)

The applicable sections are seven and thirteen, which, omitting irrelevant portions, read:

"Sec. 7. That the active list of the line of the Navy, as constituted by section one of this act, shall be composed of eighteen rear admirals, seventy captains, one hundred and twelve commanders, one hundred and seventy lieutenant commanders, three hundred lieutenants, and not more than a total of three hundred and fifty lieutenants (junior grade) and ensigns: *Provided*, That each rear admiral embraced in the nine lower numbers of that grade shall receive the same pay and allowance as are now allowed a brigadier general in the Army. Officers, after performing three years' service in the grade of ensign, shall, after passing the examinations now required by law, be eligible to promotion to the grade of lieutenant (junior grade): *Provided*, That when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the Army: *And provided further*, That nothing contained in this section shall be onstrued to prevent the retirement of officers who now have the rank or relative rank of commodore with the rank and pay of that grade.

"Sec. 13. That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army: *Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty; but this provision shall not apply to warrant officers commissioned under section twelve of this act: *Provided, further*, That

when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places. . . . *And provided further,* That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law: *And provided further,* That nothing in this act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy."

By section 1466 of the Revised Statutes of the United States it was, among other things, provided:

"SEC. 1466. The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

* * * * * *

"Rear admirals with major generals.
"Commodores with brigadier generals."
"Captains with colonels."

The findings show that the claimant was appointed and commissioned a rear admiral on March 3, 1899. From that date until March 2, 1901, he was one of the rear admirals "embraced in the nine lower numbers of that grade." He served on shore from March 3, 1899, to February 13, 1901, and for the rest of the time at sea. While at sea he received the same pay as was "allowed a brigadier general in the army," and while on shore he received pay at the same rate less fifteen per centum, together with commutation in lieu of allowance of quarters. Judgment was rendered in favor of the United States, (36 Ct. Claims Rep. 266,) from which judgment the claimant took this appeal.

Mr. Justice BREWER delivered the opinion of the Court.

This case involves a mere question of statutory construction. The matter of military and naval salaries is one exclusively within the control of Congress. The courts may neither increase nor decrease them, correct any supposed inequalities, nor in any manner set aside or modify the action of the legislative branch of the government in respect thereto. If there be inequality, injustice, it can be corrected alone by Congress, and the courts may not interfere.

The primary rule of statutory construction is, of course, to give effect to the intention of the legislature. Whenever that is apparent it dominates and interprets the language used. But when the intent is a debatable question, and there is nothing on the face of the statute which clearly indicates such intent, there are certain minor and subsidiary rules by which courts are guided in determining the true construction.

In the case at bar neither the words of the statute nor the circumstances and conditions of this legislation make perfectly clear the intent of Congress. If we look alone upon section 13, we may well conclude that Congress had one thought in its mind, while if we turn to section 7 another and somewhat different intent is apparent. Section 13 suggests a complete parallel in the matter of pay between all the officers of the Navy and those of the Army according to their several ranks. Section 7, on the other hand, points to a special exception in respect to one-half the officers of a certain rank in the Navy. The ingenious and plausible arguments made by counsel on the respective sides clearly show that it is a debatable question whether Congress intended that after the first of July, 1899, there should be only one uniform rule controlling the pay of all the respective officers of the Army and the Navy, or whether as to one-half of the rear admirals a different rule was contemplated. Under those circumstances of doubt we turn to other rules of statutory construction.

Before noticing them it is well to understand exactly the contentions of the parties. The claimant insists that the first proviso in section 7 establishes a complete but temporary rule for the payment of the nine lower members of the grade of rear admiral; that no provisions of other sections of this statute, or of any other statute, limit or qualify the right of the nine junior rear admirals to the full pay given by statute to a brigadier general. On the other hand, the government contends that the proviso is subject to the general rule which obtains in respect to all other naval officers, of a fifteen per cent difference between the pay when on shore duty and that when at sea. Again, the claimant insists that by section 13, after the 30th day of June, 1899, all rear admirals became entitled to the pay and allowances of major generals in the army, and that the proviso in section 7, in respect to the nine junior rear admirals, was temporary in its nature, and expired on the 30th of June, 1899; while the government contends that the distinction between the nine senior and the nine junior rear admirals is a permanent provision, and did not cease to have force on the 30th of June, 1899.

It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special—the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special. In *Ex parte Crow Dog*, (109 U. S. 556, 570,) this court said:

"The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is *generalia specialibus non derogant.* 'The general principle to be applied,' said Bovill, C. J., in *Thorpe* v. *Adams,* (L. R. 6 C. P. 135,) 'to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together.' 'And the reason is,' said Wood, V. C., in *Fitzgerald* v. *Champenys,* (30 L. J. N. S. Eq. 782; 2 Johns. & Hem. 31, 54,) 'that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.'"

In Black on Interpretation of Laws, 116, the proposition is thus stated:

"As a corollary from the doctrine that implied repeals are not favored, it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all."

So, in Sedgwick on the Construction of Statutory and Constitutional Law, the author observes, on page 98, with respect to this rule:

"The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms or treating the subject in a general manner and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all."

And in *Crane* v. *Reeder,* (22 Mich. 322, 334,) Mr. Justice Christiancy, speaking for the Supreme Court of that State, said:

"Where there are two acts or provisions, one of which is special and particular, and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature is not to be presumed to have intended a conflict."

Both the text books and the opinion just quoted cite many supporting authorities.

In the light of this canon, how should these two sections be construed? Section 7 in effect abolishes the rank of commodore, at least so far as respects the active list of the line of the Navy, and lifts those in that rank to that of rear admiral. The attention of Congress was thus directed to such change, and the proper accompanying provisions in respect to salary and otherwise, and it declared that the lower nine rear admirals,

they who were by the section lifted to that rank, should receive a particular salary. Clearly that was a special provision in respect to a matter to which the attention of Congress was at the time directed. If another statute had been passed at a subsequent or on the same day making general provision for the salaries of naval officers, clearly the canon to which we have referred would apply. *A fortiori*, when the subsequent general provision is in the same statute it should be held applicable. So, when in section 13, Congress prescribed a general rule for the salaries of naval officers, such general rule cannot within the scope of this canon be understood as repealing the special provision in the prior section, but the special provision must be taken as an exception to and limitation of the general rule.

But it is said that harmony between the two may be obtained by limiting the operation of the special provision to the period between the passage of the act and the 30th of June following. But that necessitates adding something to the words of the special provision, so that it shall read that from the date of the act until the 30th of June following such should be the rule in respect to the salaries of the recently promoted commodores. But the same harmony can be obtained by adding to the general provision a clause like this: Except in respect to the nine lower numbers of the grade of rear admiral. In either case the harmony is secured by adding some words of qualification, and the rule, as we have seen, is to the effect that the additional words of qualification are to be put to the general provision rather than to the special.

It is urged that the provision in section 7 was intended to merely fill out the present fiscal year, and that Congress meant by this legislation to start the new fiscal year, July 1, 1899, with one general rule of equality between the pay of officers of the Navy and that of officers of the Army. There might have been some force in this suggestion if the pay of the nine lower rear admirals had been continued through the balance of the year the same as it was at the date of the passage of the act. But all of them, whether commodores or captains, were by this special provision given an increase of pay. So Congress was not simply continuing salaries, but was making special provision for the nine lower numbers of the grade of rear admirals, giving them an increase of pay over that which they had previously received.

Another matter worthy of notice is this: Prior to the act of March 3, 1899, the corresponding ranks of officers of the Navy and the Army were rear admiral and major general, commodore and brigadier general, captain and colonel. By that act the rank of commodore was abolished, although that of brigadier general was undisturbed. No change was made in the relative rank of captain and colonel, or of rear admiral and major general, but the legislation left one rank in the Army to which there was no cor-

responding rank in the Navy. The statute in effect lifted the rank in the Navy which was corresponding to that of brigadier general in the Army to that of rear admiral, and corresponding with that of major general in the Army. The individuals thus raised in rank were not so raised on account of distinguished services or for any personal reason, but simply in consequence of the abolition of the official rank they had held. Is it unreasonable to believe that Congress thought it unwise to give to those officers (who had neither by length of service or by personal distinction become entitled to the position of rear admiral, as it had stood in the past) all the benefits of such position? Would it be unnatural for Congress to bear in mind those who by length of service or by personal distinction had already earned the position, and provide that in, at least, the matter of pay there should be some recognition of the fact? Again, is it unreasonable to believe that Congress intended that those officers whose past services placed them according to the prior relative rank side by side with brigadier generals of the Army, should not by a mere change of statute be given a benefit in salary which was not at the same time accorded to brigadier generals in the Army? May not this explain its action in so dividing the rear admirals into two classes—one composed substantially of former rear admirals, equal both in rank and pay with major generals in the Army, and the other of those who in the past were only commodores, to whom was given the rank of rear admirals, but the pay of brigadier generals in the Army?

Still another matter may be mentioned. The second proviso of section 7 reads:

"*Provided*, That when the office of chief of bureau is filled by an officer below the rank of rear admiral, said officer shall, while holding said office, have the rank of rear admiral and receive the same pay and allowance as are now allowed a brigadier general in the army."

There is no similar clause in section 13. Why should Congress in section 7 make provision for the rank and pay of certain officers who during the ensuing four months might be charged with certain duties, and omit any such provision in prescribing salaries generally and permanently? Is it not reasonable to believe that Congress intended this as a special provision which should continue after the 30th of June, 1899, and as a permanent rule for the cases named?

These considerations certainly tend to support the conclusion which follows from enforcing the well-recognized canon of construction in respect to special and general statutes. We think the Court of Claims was correct when it said:

"Section 13 is in general terms, and the language there used does not indicate that it was the intention of the Congress to abrogate the special provision made in section 7 for the rear admirals 'embraced in the nine

lower numbers of that grade;' and special provision having been made for them it can not be held that a subsequent general statute, much less in the same act, was intended to alter or repeal the special provision so made."

The further question is whether the provision in section 7, that the rear admirals embraced in the nine lower numbers of that grade should receive such pay and allowances as were given to brigadier generals, was intended to be absolute and exclusive, practically ignoring the general rule in respect to naval service of a difference between the pay of officers doing shore duty and that of those at sea? When there has been a long-established rule of difference in the compensation for the two kinds of services; when that rule is expressly recognized and continued in this same statute, as it is in section 13, when it is not in terms excluded in section 7, it would be going too far to hold it inapplicable to the salary provided for by section 7. In other words, it is not to be believed that Congress by that section carved out a salary which in all respects ignored the general rules pertaining to salaries of naval officers. It is rather to be believed that only the amount was fixed, and that otherwise it was to be in harmony with and subordinate to any and all general provisions. We are of opinion that the Court of Claims was right in its conclusions in this respect.

It may be conceded that the questions we have been considering are not free from doubt, and much may be said in favor of the view opposed to that we have taken. Inasmuch as Congress has full control over the matter of salaries it can at any time appropriate to these officers such a sum as will make their salaries that which they contend was intended by the act of Marth 3, 1899. It is not a case in which the judicial decision must necessarily be a finality, but one in which there is full power on the part of Congress to correct any mistake which may have been made.

The judgment of the Court of Claims is

Affirmed.

Mr. Justice GRAY took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.